

REMARKS

Claims 1-6 and 8-24 are pending. By this Amendment, claims 7 and 25-32 are canceled without prejudice or disclaimer and claims 1-3, 5, 8, 12, 22 and 23 are amended. Claims 1-6, 8-11, 23 and 24 are withdrawn from consideration as being drawn to a non-elected invention. Reconsideration in view of the above-amendments and following remarks is respectfully requested.

Claims 12-22 were rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-10 of U.S. Patent 6,943,941 to Flagello et al. in view of U.S. Patent Application Publication 2003/0206347 A1 to Sabia et al. The rejection is respectfully traversed.

The instant application is a divisional of U.S. Application 10/374,509, which issued as U.S. Patent 6,943,941, and was filed under 35 U.S.C. § 121 in response to a restriction requirement, including an election of species requirement, issued in U.S. Application 10/374,509. In U.S. Application 10/374,509, the Examiner established that the embodiment of Figure 2b, which is covered by claims 1-10 of U.S. Patent 6,943,941, was a patentably distinct species from the other embodiments of the polarizer disclosed in U.S. Application 10/374,509.

MPEP § 804.04 states: "In order to promote uniform practice, every Office action containing a rejection on the ground of double patenting which relies on the parent application rejecting the claims in a divisional or continuing application where the divisional or continuing application was filed because of a requirement to restrict made by the examiner under 35 U.S.C. 121, including a requirement to elect species, must be submitted to the Technology Center Director for approval prior to mailing." (Underlining emphasis added.) See, also, MPEP § 804.01.

As the instant application was filed under 35 U.S.C. § 121 because of a requirement to restrict, including a requirement to elect species, in parent Application 10/374,509, and as there is no indication that the rejection was approved by the Technology Center Director, the rejection is improper and must be withdrawn.

Reconsideration and withdrawal of the obviousness-type double patenting rejection are respectfully requested.

Claim 1 has been amended to recite a polarizer device that corresponds to the polarizer device of claim 12 and claim 23 has been amended to include a polarizer device that corresponds to the polarizer of claim 12. In other words, claim 1 recites Bsp and claim 12

recites ABsp. Therefore, the claims are not restrictable. See MPEP § 806.05(c)I. Rejoinder and allowance of claims 1-6, 8-11, 23 and 24 are respectfully requested.


Claims 25-32 have been canceled without prejudice or disclaimer as to their filing in a further divisional application.

In view of the above amendments and remarks, Applicants respectfully submit that all of the claims are allowable and the entire application is in condition for allowance.

Should the Examiner believe that anything further is desirable to place the application in better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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